

BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

LESLIE PIÑA

Respondent.

CASE No. 2012-238

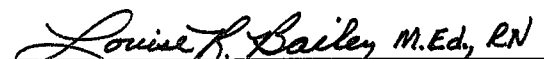
OAH No. 2011100905

NOTICE OF DECISION AND ORDER

No action having been taken on the attached Proposed Decision,
pursuant to Government Code section 11517(c)(2) the attached decision is
hereby deemed adopted by operation of law on June 2, 2012.

Pursuant to Government Code section 11519, this Decision shall become
effective on July 2, 2012.

Date: June 2, 2012.


Louise R. Bailey, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

LESLIE PIÑA,

Respondent.

Case No. 2012-238

OAH No. 2011100905

PROPOSED DECISION

Administrative Law Judge Ralph B. Dash heard this matter on January 19, 2012, at Los Angeles, California.

Gloria A. Barrios, Supervising Deputy Attorney General, represented Complainant.

Leslie Piña (Respondent) represented herself.

Oral and documentary evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

FINDINGS OF FACT

1. Louise R. Bailey, M.Ed., RN made the Statement of Issues in her official capacity as the Executive Office of the Board of Registered Nursing (Board).¹
2. Respondent filed her application, dated January 20, 2011, with the Board, for licensure by examination as a registered nurse. The application was denied and this hearing ensued.²
3. On January 7, 2009, in the Superior Court of the State of California, County of Orange, case number 08NM13284 M A, Respondent was convicted on her plea of guilty to

¹ At the time this matter was heard, the Board had been dissolved and the Department of Consumer Affairs acted as its successor. The Board has since been reestablished.

² At the hearing, Counsel for Complainant requested that a Proposed Decision be issued granting Respondent a probationary license (assuming Respondent passes the licensing examination) but, due to the then uncertain status of the Board, she could not enter into a settlement agreement for the issuance of such license.

one count of violating Penal Code section 594, subdivisions (a)(2) and (b)(2)(A), misdemeanor vandalism, a crime substantially related to the functions, qualifications and duties of a Board licensee by its facts and circumstances.

The court suspended imposition of sentence and placed Respondent on informal probation for three years under certain terms and conditions, including that she perform "20 Day(s) Cal Trans in lieu of 20 days jail" and ordered her to pay fines and fees totaling \$220 and make restitution to the victim.³

Respondent has successfully completed her probation.

4. The facts and circumstances of the crime are that Respondent took a number of items of clothing into a fitting room in a Macy's department store. She removed an electronic sensor on a shirt that had a retail price tag of \$59. In the process of removing the sensor, Respondent damaged the shirt. When Respondent left the dressing room she went to a cashier and paid for one item of clothing. She returned the blouse to the cashier and placed the sensor on the counter. She did not offer to pay for the damage to the blouse and was stopped outside of the store by a loss prevention officer. Respondent admitted to the arresting police officer that, when she removed the sensor from the shirt, she "had the idea of taking [the shirt] without paying for it."

5. Even though she did not actually steal the shirt, Respondent was extremely embarrassed by the incident. She had difficulty admitting, even to herself, that she had thought of committing a theft. Respondent completed nursing school, including clinical hospital rotations, while she was on probation. Respondent's nursing school knew of her conviction but nevertheless permitted her to complete her studies. While still on probation, Respondent applied to the Board of Vocational Nursing and, after disclosing her conviction, was permitted to take that board's licensing examination. There was no evidence Respondent engaged in any other criminal conduct.

6. Respondent is a single mother who cares for her 13-year old son. She is very active in his education and school functions. At the hearing, Respondent sincerely expressed remorse for her conduct. Four witnesses testified on Respondent's behalf. Two were nursing school classmates who had done clinical rotations with Respondent. They agreed Respondent was very passionate about her nursing career and that Respondent would be a very good nurse. Respondent was described as "compassionate, friendly, sweet and smart." They also described her as having excellent clinical skills and a good bedside manner. In addition to the character witnesses, Respondent offered reference letters (Exhibit A). One letter was from Lurelean B. Gaines, Chairperson of the Department of Nursing at East Los Angeles College where Respondent received her nursing degree. Ms. Gaines noted that Respondent has matured and is "very aware of the choices that she has made in the past, realizing that there are consequences for [her] behavior. She recognizes the importance of

³ The amount of restitution was not established by the evidence. However, the damaged item had a retail price of \$59.

having an education and sincerely appreciates the fact that she has earned a degree in a profession that provides numerous opportunities . . . a profession that allows her to give back to the community.”

CONCLUSIONS OF LAW

1. In the absence of a statute to the contrary, the burden of proof is on the applicant seeking a license or permit to prove her fitness for issuance of the license she seeks. (*Martin v. Alcoholic Beverage Control Appeals Board* (1959) 52 Cal.2d 259, 265; *BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1224-1225.) In the absence of any law to the contrary, the required standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

2. Business and Professions Code section 2736 provides:

(a) An applicant for licensure as a registered nurse shall comply with each of the following:

(1) Have completed such general preliminary education requirements as shall be determined by the board.

(2) Have successfully completed the courses of instruction prescribed by the board for licensure, in a program in this state accredited by the board for training registered nurses, or have successfully completed courses of instruction in a school of nursing outside of this state which, in the opinion of the board at the time the application is filed with the Board of Registered Nursing, are equivalent to the minimum requirements of the board for licensure established for an accredited program in this state.

(3) Not be subject to denial of licensure under Section 480.

3. The Board may deny an application for licensure as a registered nurse if the applicant has been convicted of a crime which is substantially related to the qualifications, functions, and duties of a registered nurse. (Bus. & Prof. Code, §§ 480, subd. (a)(1); 2761, subd. (f).) The Board may deny an application for licensure as a registered nurse if the applicant has committed any act which would constitute grounds for discipline if committed by a licensee. (Bus. & Prof. Code, § 480, subd. (a)(3)(A).)

4. Business and Professions Code section 2765 provides in part that a plea of guilty to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, irrespective of a subsequent order under the provisions of Penal Code section 1203.4 allowing such person to withdraw his or her plea of

guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

5. Business and Professions Code section 481 provides:

Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

6. To comply with Business and Professions Code section 481, the Board promulgated California Code of Regulations, title 16, section 1444, entitled "Substantial Relationship Criteria," which provides in part:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.

7. The crime of vandalism, particularly under the facts and circumstances of this case, are so substantially related. A Board licensee must possess a high degree of honesty and integrity. There is no greater trust than that between a healthcare provider and patient. (*Krain v. Medical Board* (1999) 71 Cal.App.4th 1416). Accordingly, the Board's denial of Respondent's application (Finding 2) based on her conviction (Findings 3 and 4) was proper.

8. Although Respondent's application is subject to denial, the Board may nevertheless issue a license, or grant the privilege of examination, if it finds Respondent has been sufficiently rehabilitated from her criminal conduct. In October of 2002, the Board adopted Recommended Guidelines for Disciplinary Orders and Conditions of Probation. The purpose of the guidelines is to fulfill its obligation to protect the consumer of nursing services from the unsafe, incompetent and/or negligent registered nurse.⁴ The Board carefully considers the totality of the acts and circumstances in each individual case, with the safety of the public being paramount.

9. California Code of Regulations, title 16, section 1445, subdivision (a), outlines the Board's criteria for determining whether an applicant has been sufficiently rehabilitated. When considering the denial of a license the following criteria are evaluated in determining rehabilitation: (1) The nature and severity of the acts; (2) Evidence of any act(s) committed

⁴ The language contained in the guidelines suggests that the guidelines are intended to apply to licensees. The guidelines do not, for the most part, address whether they apply to license applicants. Since the primary policy interest underlying the guidelines is the safety of the public, and since that interest would seem also to be implicated in cases involving license applicants, the guidelines are deemed generally applicable, at least by analogy, to this proceeding.

subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Business and Professions Code section 480; (3) The time that has elapsed since commission of the act(s); (4) The extent to which the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant; (5) Evidence of rehabilitation.

10. Addressing each of these five criteria, based on Findings 4, 5 and 6: (1) While Respondent's intended conduct was theft, she never actually carried out her intent, lessening to some extent the negative impact of her conduct; (2) There was no evidence of any subsequent criminal or other misconduct; (3) More than three years has passed since Respondent committed the crime; (4) Respondent has complied with and successfully completed all terms of her probation; (5) Respondent presented sufficient evidence of rehabilitation showing she is sincerely remorseful of her conduct, has completed her education, cares for her son and is viewed as trustworthy by her peers and educator. Accordingly, Respondent has established that it would not be contrary to the public health, safety and welfare for the Board to permit Respondent to take her licensing examination and, if passed, issue her a license conditioned as set forth below.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The application for licensure of Leslie Piña is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to Respondent. Said license shall immediately be revoked, the order of revocation stayed, and Respondent placed on probation for a period of three years on the following conditions:

1. **SEVERABILITY CLAUSE.** Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

2. **OBEY ALL LAWS.** Respondent shall obey all federal, state, and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

3. **CRIMINAL COURT ORDERS.** If Respondent is under criminal court orders, including probation or parole, and the order is violated, such violation shall be deemed a violation of these probation conditions and may result in the filing of an accusation and/or petition to revoke probation.

4. **COMPLY WITH THE BOARD'S PROBATION PROGRAM.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of Respondent's compliance. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of the Board's Probation Program, Respondent's license shall be fully restored.

5. **REPORT IN PERSON.** Respondent shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

6. **RESIDENCY OR PRACTICE OUTSIDE OF CALIFORNIA.** Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation period. Respondent's probation is tolled if and when she resides and/or practices as a registered nurse outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside California and at least 30 days prior to reestablishing residency or returning to practice in California.

Respondent shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in status of such license during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which she is licensed as a registered nurse.

7. **SUBMIT WRITTEN REPORTS.** Respondent shall submit or cause to be submitted such written reports/declarations and verifications of actions under penalty of perjury as required by the Board. These reports/declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

8. **FUNCTION AS A REGISTERED NURSE.** Respondent shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for six consecutive months or as determined by the Board. For purposes of compliance with this section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advance practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for six consecutive months or as determined by the Board.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of her good faith efforts to comply with this condition and no other conditions have been violated, the Board, in its discretion, may grant an extension of the probation period for up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

9. EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS.

Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board. Respondent shall provide a copy of this decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health care related employment, with a full explanation of the circumstances surrounding the termination or separation.

10. SUPERVISION. Respondent shall obtain prior approval from the Board regarding her level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care. Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to, the following:

(a) Maximum. The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate. The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum. The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care. If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

11. EMPLOYMENT LIMITATIONS. Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of Nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

12. COMPLETE NURSING COURSE(S). Respondent, at her own expense, shall enroll in and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

13. LICENSE SURRENDER. During Respondent's term of probation, if she ceases practicing as a registered nurse due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its

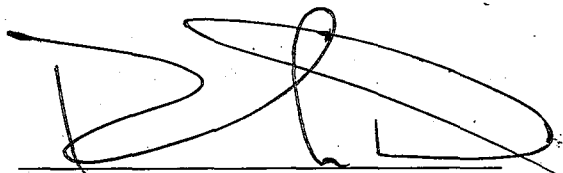
discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (a) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (b) One year for a license surrendered for a mental or physical illness.

14. VIOLATION OF PROBATION. If Respondent violates the conditions of her probation, the Board, after giving her notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license. If during the period of probation an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

Date: 2-21-12



RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings

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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
Against:

13 **LESLIE PINA**
1131 Highland Drive
14 Monterey Park, CA 91754

15 Respondent.

Case No. **2012-238**
STATEMENT OF ISSUES

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about January 28, 2011, the Board of Registered Nursing (Board) received an
23 Application for Licensure by Examination for a Registered Nurse License from Leslie Pina
24 (Respondent). On or about January 20, 2011, Leslie Pina certified under penalty of perjury to the
25 truthfulness of all statements, answers, and representations in the application. The Board denied
26 the application on May 3, 2011.

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subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

6. Section 2736 provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

7. Section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 1444, states, in pertinent part:

AA conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare."

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potential unfitness to perform the functions authorized by her license in a manner consistent with the public health, safety, or welfare, in violation of sections 2761, subdivision (f) and 490, in conjunction with California Code of Regulations, title 16, section 1444. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 9, as though set forth fully.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Denying the Application for Licensure by Examination for a Registered Nurse License from Leslie Pina; and
2. Taking such other and further action as deemed necessary and proper.

DATED: October 12, 2011

for *Louise R. Bailey*
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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